

**SIXTH DISTRICT COURT OF APPEAL
STATE OF FLORIDA**

Case No. 6D23-1255
Lower Tribunal No. 2021-CF-004902-A-O

JAMARI JEAN,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

Appeal from the Circuit Court for Orange County.
Patricia L. Strowbridge, Judge.

August 31, 2023

MIZE, J.

Appellant, Jamari Jean (“Jean”), appeals his conviction for possession of a firearm or ammunition by a convicted felon.¹ Jean asserts that the trial court erred when it denied his motion to suppress the firearm and ammunition found during the warrantless search of a locked fanny pack he was wearing when he was arrested. We agree and reverse his conviction.

¹ This case was transferred from the Fifth District Court of Appeal to this Court on January 1, 2023.

Background and Procedural History

Orange County Sheriff's deputies obtained a warrant for Jean's arrest for one count of aggravated battery with a firearm and one count of aggravated assault with a firearm. To execute the warrant, the deputies surveilled Jean's home and waited for him to return so they could complete the arrest. As the deputies waited, Jean rode up to the house on a bicycle and dismounted the bicycle. Deputy Troy Tiegs ("Tiegs") then got out of his vehicle and saw Jean standing in front of the house's garage behind another vehicle that was in the driveway. Jean was wearing two bags, a backpack on his back and a fanny pack that was strapped to the front of his chest. When Jean saw Tiegs coming toward him, Jean began to walk away from Tiegs and into the garage. Both Tiegs and another deputy, Richard Stelter ("Stelter"), ordered Jean to stop walking and show his hands. Tiegs followed Jean into the garage, and because Tiegs was unable to see one of Jean's hands, Tiegs tackled Jean to the ground. Stelter joined Tiegs in the garage and the officers pushed Jean onto the floor so that he was laying on his stomach. Once on the floor, Stelter and Tiegs pulled Jean's hands out from under him and put him in handcuffs.

After Jean was handcuffed in the garage, the officers removed both bags from him. The fanny pack was given to Stelter, who took it outside of the garage and placed it on the hood of a car that was in the driveway. During this time and at all relevant times thereafter, Jean was eight to ten feet away from the fanny pack,

handcuffed with his hands behind his back, surrounded by deputies, with multiple deputies between him and the fanny pack. Stelter stood at the hood with the fanny pack and had exclusive control over the fanny pack at all times after the officers removed it from Jean. Both Stelter and Tiegs testified that if Jean had attempted to reach the fanny pack, he would not have been able to do so.

The fanny pack had a keylock on it. Stelter testified that he did not know what was in the fanny pack and he could not see inside of it without opening it. Stelter manipulated, squeezed, and felt the locked fanny pack with his hands. Stelter testified at the hearing on the motion to suppress that when he felt the fanny pack with his hands, it “certainly” felt like there could be a firearm inside of it, but that he did not know for sure until he opened it.² Stelter asked the other officers to search Jean for the key. Once the key was found on Jean, Stelter unlocked the fanny pack and found the firearm which Jean was ultimately convicted of possessing.

The only warrant the deputies obtained was the arrest warrant that they were executing. The deputies never sought or obtained a warrant to search Jean’s locked fanny pack.

After the events described above, the State charged Jean with the crime of possession of a firearm or ammunition by a convicted felon. Jean pled not guilty

² Contrary to his testimony at the hearing on the motion to suppress, Stelter’s body-worn camera footage showed that when Stelter felt the locked fanny pack with his hands, he stated, “I don’t think there’s a gun in here...”

and filed a motion to suppress the firearm and ammunition. After the trial court denied the motion, Jean changed his plea to nolo contendere but expressly reserved his right to appeal the denial of the motion to suppress, which both the State and the defense stipulated was dispositive of the charge. The trial court adjudicated Jean guilty, and this appeal followed.

Analysis

I. Standard of Review

“A trial court’s ruling on a motion to suppress comes to the appellate court clothed with a presumption of correctness and the court must interpret the evidence and reasonable inferences and deductions derived therefrom in a manner most favorable to sustaining the trial court’s ruling.” *Terry v. State*, 668 So. 2d 954, 958 (Fla. 1996). “Accordingly, the appellate courts defer to the trial court’s factual findings so long as the findings are supported by competent, substantial evidence.” *Rodriguez v. State*, 187 So. 3d 841, 845 (Fla. 2015) (quoting *State v. Hankerson*, 65 So. 3d 502, 506 (Fla. 2011) (internal quotations omitted)). However, we review “de novo the mixed questions of law and fact that arise in the application of the historical facts to the protections of the Fourth Amendment.” *Wyche v. State*, 987 So. 2d 23, 25 (Fla. 2008); *see also Connor v. State*, 803 So. 2d 598, 608 (Fla. 2001).

II. The Fourth Amendment to the U.S. Constitution³

The most basic rule under the Fourth Amendment to the United States Constitution “is that searches conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions.” *Smallwood v. State*, 113 So. 3d 724, 729–30 (Fla. 2013) (quoting *Coolidge v. New Hampshire*, 403 U.S. 443, 454–55 (1971) (internal quotations omitted)). “The exceptions are jealously and carefully drawn, and there must be a showing by those who seek exemption that the exigencies of the situation made that course imperative.” *Id.* (internal quotations omitted). “The burden is on those seeking the exemption to show the need for it.” *Id.*

“Among the exceptions to the warrant requirement is a search incident to a lawful arrest.” *Arizona v. Gant*, 556 U.S. 332, 338 (2009). “The exception derives

³ The Fourth Amendment to the United States Constitution and Article 1, Section 12 of the Florida Constitution both guarantee citizens the right to be free from unreasonable searches and seizures. Article 1, Section 12 contains a conformity clause mandating that the right guaranteed therein must be construed in conformity with the Fourth Amendment to the United States Constitution, as interpreted by the United States Supreme Court. Accordingly, “[i]n considering the relevant case law, we are required to adhere to the interpretations of the United States Supreme Court, but are not bound to follow the decisions of other federal courts.” *Harris v. State*, 238 So. 3d 396, 399 (Fla. 3d DCA 2018) (quoting *State v. Markus*, 211 So. 3d 894, 902 (Fla. 2017) (internal quotations omitted)). “If no U.S. Supreme Court precedent is factually or legally on point, we may review Florida state precedent, as well as other state and federal decisions for guidance on a search and seizure issue.” *Id.* (quoting *Markus*, 211 So. 3d at 902 (internal quotations omitted)).

from interests in officer safety and evidence preservation that are typically implicated in arrest situations.” *Id.* “[A] search incident to arrest only includes the arrestee’s person and the area within his immediate control, i.e., the area into which he may reach to acquire a weapon or destroy evidence.” *Smallwood*, 113 So. 3d at 734 (citing *Gant*, 556 U.S. at 339). This limitation “ensures that the scope of a search incident to arrest is commensurate with its purposes of protecting arresting officers and safeguarding any evidence of the offense of arrest that an arrestee might conceal or destroy.” *Gant*, 556 U.S. at 339.

Applying this limitation, the United States Supreme Court has stated that once “there is no possibility that an arrestee could reach into the area that law enforcement officers seek to search, both justifications for the search-incident-to-arrest exception are absent and the rule does not apply.” *Smallwood*, 113 So. 3d at 735 (quoting *Gant*, 556 U.S. at 339). Thus, where an arrestee has been secured by police officers and separated from the thing that the officers wish to search, neither of the rationales for the search incident to arrest exception apply and, accordingly, a search of that thing cannot be conducted as a search incident to arrest. *Id.*; *Gant*, 556 U.S. at 335 (stating that law enforcement are not authorized to conduct “a vehicle search incident to a recent occupant’s arrest after the arrestee has been secured and cannot access the interior of the vehicle.”); *see also Harris v. State*, 238 So. 3d 396, 400 (Fla. 3d DCA 2018). The Third District Court of Appeal has specifically held that, in the case of

a backpack carried by an arrestee at the time of arrest, once police officers have reduced the backpack to their exclusive control and there is no longer any danger of the arrestee gaining access to the backpack, the search of the backpack can no longer be justified as a search incident to arrest. *Harris*, 238 So. 3d at 402; *see also U.S. v. Davis*, 997 F.3d 191, 200 (4th Cir. 2021) (holding that in the case of a backpack in the possession of an arrestee at the time of arrest, police officers could not search the backpack as a search incident to arrest where the arrestee was secured and could not access the backpack at the time of the search); *U.S. v. Knapp*, 917 F.3d 1161, 1169 (10th Cir. 2019) (holding that in the case of a purse carried by an arrestee at the time of arrest, police officers could not search the purse as a search incident to arrest where the arrestee had been secured and police officers had reduced the purse to their exclusive control by the time of the search).

In addition to searching an arrestee's person and the area within his immediate control, the United States Supreme Court has also held that "circumstances unique to the vehicle context justify a search incident to a lawful arrest when it is reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle." *Gant*, 556 U.S. at 335 (quoting *Thornton v. United States*, 541 U.S. 615, 632 (2004) (Scalia, J., concurring in judgment) (internal quotations omitted)). However, neither the United States Supreme Court nor the Florida Supreme Court have ever applied this exception to searches of something other than a vehicle or containers located

within a vehicle. Indeed, the United States Supreme Court stated that this exception applies in “circumstances *unique to the vehicle context*” and can “supply a basis for searching the passenger compartment *of an arrestee’s vehicle* and any containers therein.”⁴ *Gant*, 556 U.S. at 343-44 (emphasis added); *see also Harris*, 238 So. 3d at 403 (referring to this exception as the “vehicle of the arrestee exception”); *Davis*, 997 F.3d at 197 (noting that the exception to the warrant requirement recognized in *Gant* allowing a search incident to arrest when police officers believe evidence relevant to the crime of arrest might be found applies only to searches of vehicles); *Knapp*, 917 F.3d at 1168 (stating that while the first prong of *Gant* concerning searches of an arrestee’s person and the area within his immediate control for purposes of officer safety and evidence preservation applies outside the vehicle context, the second prong of *Gant* pertaining to searches that may be conducted when police officers believe evidence relevant to the crime of arrest might be found

⁴ The only case this Court could find in which a court arguably applied the “evidence relevant to the crime of arrest” exception outside of the vehicle context was *U.S. v. Jean*, 636 F. App’x 767 (11th Cir. 2016). The analysis in *Jean* is truncated to say the least and does not even purport to decide that the evidence relevant to the crime of arrest exception did in fact apply in that case. Instead, the Eleventh Circuit concluded its analysis by stating that even if the search was not legal (indicating that it may not have been), the exclusionary rule did not apply because the contents of the bag that was searched would have inevitably been discovered by the police. *Jean*, 636 F. App’x at 769. At any rate, as explained in note 2, *supra*, we are required to adhere to the interpretations of the United States Supreme Court, not other federal courts, and the Supreme Court has stated that the evidence relevant to the crime of arrest exception is justified by “circumstances unique to the vehicle context.” *Gant*, 556 U.S. at 335.

applies only to searches of vehicles). Additionally, unless the police have a reasonable belief that the vehicle contains evidence of the crime for which the arrestee was arrested, this exception cannot serve as a basis to search the arrestee's vehicle. *Gant*, 556 U.S. at 344.

III. Jean's Motion to Suppress

In the proceedings below, the trial court correctly concluded that “[o]nce the backpack and the fanny pack were removed from the Defendant and placed upon the hood of the police car, out of reach of the Defendant, a search based upon officer safety or destruction of evidence would no longer have been justified.” This conclusion was mandated by the Supreme Court’s holding in *Gant* that “[i]f there is no possibility that an arrestee could reach into the area that law enforcement officers seek to search, both justifications for the search-incident-to-arrest exception are absent and the rule does not apply.” 556 U.S. at 339; *see also Smallwood*, 113 So. 3d at 735 (“*Gant* demonstrates that while the search-incident-to-arrest warrant exception is still clearly valid, once an arrestee is physically separated from an item or thing, and thereby separated from any possible weapon or destructible evidence, the dual rationales for this search exception no longer apply.”); *Harris*, 238 So. 3d at 403 (finding that the search of a backpack was not permissible where the officers had removed the backpack from the arrestee, handcuffed the arrestee, and sat the arrestee down five feet from the backpack because, at that point, the arrestee could

not have accessed the backpack). The trial court found, however, that the search of the fanny pack was justified because the officers had a reasonable basis to believe that the search of the fanny pack would reveal evidence relevant to the crime for which Jean was arrested. This was error.

As explained above, the “evidence relevant to the crime of arrest” exception or “vehicle of the arrestee exception,” as the Third District Court of Appeal called it, applies only to vehicles and any containers therein. *See Gant*, 556 U.S. at 343-44; *Harris*, 238 So. 3d at 403; *Davis*, 997 F.3d at 197; *Knapp*, 917 F.3d at 1168. Assuming Jean’s bicycle qualified as a vehicle (which we do not decide), Jean’s fanny pack was not at any point stored on or in the bicycle. Instead, the fanny pack was worn by Jean on his person after he dismounted his bicycle. Because the fanny pack was never stored on or in a vehicle, the officers were not permitted to search the fanny pack pursuant to the “evidence relevant to the crime of arrest” exception established in *Gant*. *See also Harris*, 238 So. 3d at 403 (making the same holding as to a backpack worn by an arrestee that was riding a dirt bike immediately before he was arrested).

IV. *State v. Bultman*

In its Answer Brief, the State argues that we should find the search of Jean’s fanny pack to be a proper search incident to arrest based upon *State v. Bultman*, 164 So. 3d 144 (Fla. 2d DCA 2015). We disagree for two reasons.

First, the Second District Court of Appeal's opinion in *Bultman* did not apply *Gant*. Despite *Gant* being the Supreme Court's most recent opinion concerning the search incident to arrest exception at the time that *Bultman* was decided, the *Bultman* opinion does not mention, much less purport to apply, the Supreme Court's opinion in *Gant*. *Bultman* also does not apply or mention *Smallwood*, in which the Florida Supreme Court provided a detailed analysis of *Gant* and which at that time was the Florida Supreme Court's most recent opinion concerning the search incident to arrest exception.

Second, the facts in *Bultman* were very different from this case. In *Bultman*, the police went to Bultman's house to search for a suspect in an unrelated case. *Id.* at 145. Upon the police making contact with Bultman, she consented to a search of her house. *Id.* Immediately upon entering the house, the police smelled marijuana. *Id.* The officers asked Bultman about the odor, to which Bultman responded that she had been smoking marijuana earlier that day. *Id.* The officers then asked Bultman for identification, which she said was in her purse. *Id.* She retrieved her purse and handed the officers her identification. *Id.*

However, Bultman then attempted to hide her purse from the officers, and when they asked to search the purse, she refused. The officers repeatedly asked Bultman to place the purse on the hood of their police car for officer safety and twice had to remove it from her person. The officers arrested Bultman for resisting their commands to leave the purse on the hood of the car and conducted a search of her purse incident to arrest, wherein they found drugs and paraphernalia.

Id.

Unlike Jean and his fanny pack in this case, Bultman was arrested for conduct that specifically concerned her purse and that gave rise to legitimate officer safety concerns with respect to the purse. The officers were consensually interacting with Bultman when she tried to hide the purse from them. Due to her suspicious conduct concerning the purse, the officers repeatedly asked her to put the purse down for officer safety reasons. When she refused to separate herself from the purse, the officers had to remove the purse from her person to ensure their safety. Upon seizing the purse as a necessary safety precaution, the officers then immediately searched the purse that they had reason to believe posed a safety concern. There is no indication in the opinion that, at the time the search occurred, Bultman was already secured by officers and separated from her purse such that it was impossible for her to access it.

In sum, Bultman was arrested for conduct that directly concerned her purse and that posed legitimate officer safety concerns, and the officers seized the purse as part of the arrest and then immediately searched it in order to address those officer safety concerns. That same description could not be made of Jean and his fanny pack in this case. The search of Jean's fanny pack occurred after Jean had already been totally secured and separated from the fanny pack such that there was no longer

any possibility that he could access it in order to obtain a weapon to harm the officers. Under *Gant*, such a search was not permissible.

Applying the precedent of the United States Supreme Court as we must, the officers that arrested Jean were not permitted to search his fanny pack under the facts of this case without a warrant.

V. The Exclusionary Rule and the Inevitable Discovery Doctrine

“[T]he exclusionary rule makes evidence obtained either during or as a direct result of an unlawful invasion inadmissible.” *Rodriguez*, 187 So. 3d at 845. There are three exceptions to the exclusionary rule: (1) an independent source existed for the discovery of the evidence; (2) the evidence would have inevitably been discovered in the course of a legitimate investigation; or (3) sufficient attenuation existed between the challenged evidence and the illegal conduct. *Id.* (quoting *Moody v. State*, 842 So. 2d 754, 759 (Fla. 2003)).

In its Answer Brief, the State argues that even if the search of Jean’s fanny pack was illegal, we should affirm the trial court’s order based on the second exception to the exclusionary rule, the inevitable discovery doctrine. However, the evidence presented at the hearing on the motion to suppress did not establish the applicability of the inevitable discovery doctrine.

Conclusion

The police officers' search of Jean's fanny pack violated the Fourth Amendment to the United States Constitution as interpreted by the United States Supreme Court. The State did not establish that any exception to the exclusionary rule applied to permit the admission into evidence of the firearm and ammunition that was obtained as a result of that search. For these reasons, the trial court erred by denying Jean's motion to suppress that evidence. Jean's conviction and the trial court's order denying the motion to suppress are reversed and this case is remanded to the trial court with instructions to discharge Jean.⁵

REVERSED and REMANDED with instructions.

NARDELLA, J., and ORFINGER, R.B., Associate Senior Judge, concur.

Matthew J. Metz, Public Defender, and Edward J. Weiss, Assistant Public Defender, Daytona Beach, for Appellant.

Ashley Moody, Attorney General, Tallahassee, and Allison Leigh Morris, Assistant Attorney General, Daytona Beach, for Appellee.

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING
AND DISPOSITION THEREOF IF TIMELY FILED

⁵ Both the State and Jean stipulated below that the Motion to Suppress was dispositive of the case. When an appellate court finds that a trial court erred in not suppressing evidence, and the ruling is dispositive, the proper disposition is to remand with instructions to discharge the defendant. *See Singles v. State*, 872 So. 2d 434, 436 (Fla. 4th DCA 2004); *Agreda v. State*, 152 So. 3d 114, 117 (Fla. 2d DCA 2014).